IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1854 of 2005

Ajit Gajanan Vispute .. Petitioner

versus

Indian Airlines Ltd. .. Respondents

...

Mr.Neel Helekar for the petitioner

Mr.R.S. Pai i/b M/s. Sanjay Udeshi & Co. for the respondents.

A N D

WRIT PETITION NO.1943 OF 2005

Indian Airlines Ltd. .. Petitioner

versus

Secretary, Air Corporation Employees

Union & Anr. .. Respondent

...

Mr.R.S. Pai i/b M/s.Sanjay Udeshi & Co. for the petitioner.

CORAM : D.G. KARNIK,J.

DATED : 25th July 2005.

ORAL JUDGEMENT:-

1. Rule. Mr. Pai for the respondent waives service. By consent, taken up for hearing forthwith.

2. Both the petitions are directed against the judgement and award dated 29th July 2004. For the sake of convenience, the parties are hereinafter referred to as the employer and the employee.

3. The employer is an Airline Company. The employee was one of the persons who was assigned the work of offloading the luggage of flight no. IC 192. On 16th May 1992, there was a pilferage of jewellery from the register baggage of a passenger. A complaint was lodged by the passenger and in the investigation, one gold chain and one small sized disco chain totally valued at Rs.12,500/- were recovered from the employee. A charge-sheet was issued to the employee on 13/14th October 1995

alleging misconduct. In the enquiry, the employee was found to be guilty and was dismissed. The order of dismissal was challenged by the employee in a reference u/s.10 of the Industrial Disputes Act 1947. By an award dated 29th July 2004, the Industrial Tribunal held that the standing orders/Regulations under which the enquiry was held were non-existent and therefore, the enquiry was bad in law. Consequently, the Tribunal ordered reinstatement of the employee but without any back wages. The order of reinstatement is challenged by an employer by filing Writ Petition no. 1943 of 2005. The order denying the back wages is challenged by an employee by filing Writ Petition no.1854 of 2005.

4. The misconduct alleged took place on 16th May 1992. The enquiry was commenced by a charge-sheet dated 13th/14th October 1995. In the charge-sheet it was alleged that the conduct of the employee amounted to breach of Standing Order no.1 and misconduct within the meaning of Standing Order no.16 of Standing orders (Regulations) concerning Discipline and Appeals (for short "the Regulations") applicable to the employee. Air Corporations Act, 1953 under which the Regulations were framed was

repealed by the Air Corporations (Transfer of Undertakings and Repeal) Act, 1994 (for short " the 1994 Act') with effect from 29th January 1994. In view of the repeal of the section 45 of the parent Act under which the Regulations were framed the Regulations also stood repealed and the employee could not have been charged for breach of the Regulations after 29th January, 1994. Learned counsel for the employer however relies upon the decision of the Supreme Court in Air India Vs. Union of India & Ors. reported in (1995)4 SCC 734 and contends that despite the repeal the charge sheet could be issued and the enquiry could be conducted as the Regulations were specifically saved by section 8 of the 1994 Act. In paragraph no.9 of the decision, the Supreme Court has specifically observed that section 8 of the 1994 Act does not save the regulations but only protects the remuneration, terms and conditions and privileges of those who were in the employment of Air India when the 1994 Act came into force. In the circumstances, the contention is rejected. The Tribunal was therefore right in coming to the conclusion that that enquiry could not be conducted under the repealed Regulations.

5. Learned counsel for the employer next contends that the Tribunal exceeded its jurisdiction and decided the matter which was not referred to it. The point which was referred to the decision of the Tribunal has been quoted in paragraph no.1 of the award and reads thus :

> "Whether the occasion of the management of the Indian Airlines Ltd, Mumbai in removal of Shri Ajit G. Vispute from the service with effect from 21st October 2000 is legal and justified? If not, to what relief is the workmen concern entitled?

6. The Tribunal has held that the Regulations under which the enquiry was held against the employee were non existant and therefore, enquiry was bad in law and consequently the termination was bad in law. I fail to see where the Tribunal has exceeded its jurisdiction. The Tribunal has not ordered and decided a matter not referred to it. It was necessary for the Tribunal for the purpose of deciding of the reference as to whether the Regulations under which the enquiry was held were applicable and such decision was incidental to the decision of the main point. The Tribunal was entitled to decide all incidental issues and cannot

be said to have exceeded its jurisdiction.

7. It was lastly contended that in view of the judgement of the Supreme Court in the case of Workmen of Firestone Vs. The Management of Firestone, the Tribunal ought to have given an opportunity to the employer to adduce evidence to support the order of terminations. Learned counsel for the employee submits that in an application which was made by the employer u/s.33(2)(b) of the Act, such an opportunity was given and therefore it was not necessary to give any fresh opportunity to the employee to adduce evidence. I am unable to agree for two reasons. Firstly, giving of an opportunity in an enquiry u/s.33(2)(b) would not dispense with the requirement of giving an employer an opportunity of justifying an order of termination in a reference u/s.10. Secondly, the order u/s.33(2)(b) is challenged in this Court by way a Writ Petition which is pending and a stay has been granted by this Court to the said order. In view of the stay granted by this Court, it cannot be said that order has become final, operative and binding on the parties. In my view, therefore, the employer must be given an opportunity of adducing

evidence in support of the order of termination. The matter is therefore remanded back to the Tribunal for the purpose of enabling the employer to adduce evidence to support the order of termination.

8. As regards the back wages, the question cannot be considered at this stage and it is open to the employee to challenge the order refusing the back wages in the event ultimately an order denying the back wages is passed finally by the Tribunal.

9. Writ Petitions disposed of in aforesaid terms.

10. Issuance of Certified copy be expedited.

D.G. KARNIK, J